

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

SUSAN BUCK, ANITA BECKLEY,  
RUBY ROBINSON, RITCHIE SWAGERTY,  
and DANIEL VANDERKODDE,  
on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

MIDLAND FUNDING LLC,  
MIDLAND CREDIT MANAGEMENT, INC.,  
ENCORE CAPITAL GROUP, INC., and  
LVNV FUNDING LLC,

Defendants.

Case No. 1:17-cv-203

HON. PAUL L. MALONEY

**ORAL ARGUMENT REQUESTED**

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**DEFENDANTS LVNV FUNDING, LLC, MIDLAND FUNDING, LLC, MIDLAND  
CREDIT MANAGEMENT, INC., AND ENCORE CAPITAL GROUP, INC.'S JOINT  
REPLY IN SUPPORT OF THEIR JOINT MOTION TO DISMISS**

In their Response (ECF No. 120, PageID.2146-2151) to the remaining Defendants Joint Motion, Plaintiffs do not provide any reason that the Court should deviate from its well-reasoned opinions granting Co-defendants Mary Jane M. Elliott, P.C. and Berndt & Associates, P.C.'s motions to dismiss (ECF No. 109, PageID.2075-2089), and denying Plaintiffs' motion for reconsideration (ECF No. 116, PageID.2120-2124). Rather, Plaintiffs' Response makes clear that they simply disagree with the rule of the case and oppose Defendants' Motion on the exact same bases that the Court has already rejected in this very case.<sup>1</sup>

As the Court previously found, the *Rooker-Feldman* doctrine applies to this case, and bars the Court's review. In their Complaint, Plaintiffs—state court losers—seek to challenge Michigan state-court judgments and writs of garnishment. The *Rooker-Feldman* doctrine bars such actions, as they are inextricably intertwined with the state court's decisions. As this Court already held: “The plaintiffs’ remedy was to file an objection or an appeal, not a federal lawsuit. Federal district courts do not have the authority to review allegedly erroneous judgments and orders rendered in the state courts.” (ECF No. 109, PageID.2076.) Therefore, because this Court lacks subject matter jurisdiction over Plaintiffs' claims, it should dismiss the Complaint under Fed. R. Civ. P. 12(b)(1).

Plaintiffs do take issue, however, with Defendants' request for dismissal with prejudice. In their Response, Plaintiffs claim that, since Defendants' motion is brought under 12(b)(1), the dismissal must be without prejudice. However, the *Rooker-Feldman* doctrine requires the Court

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<sup>1</sup> Defendants sought Plaintiffs' concurrence in this motion, as required by LCivR 7.1(d), but Plaintiffs unreasonably withheld their consent. Plaintiffs could have saved the Court's and the parties' resources by stipulating to the relief sought by Defendants based on the rule of the case, and preserving their arguments for appeal. Instead, as a consequence of Plaintiffs' unreasonable withholding of concurrence, Plaintiffs have caused the Court and Defendants to expend unnecessary time and resources briefing and deciding this matter.

to dismiss the case *with* prejudice. *See Loriz v. Connaughton*, 233 F. App'x 469, 475-76 (6th Cir. 2007); *Hart v. Comerica Bank*, 957 F. Supp. 958, 974 (E.D. Mich. 1997).

### **CONCLUSION**

For these reasons, and the reasons set forth in its principal brief, Defendants request that this Court grant their Motion and enter an Order dismissing Plaintiffs' Complaint, award Defendants their costs and fees in bringing this Motion, and grant such other relief in Defendants' favor, and against Plaintiffs, as is just and proper.

Dated: September 26, 2018

Respectfully submitted,

LVNV FUNDING LLC,  
Defendant

By: /s/ Nabil G. Foster

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MIDLAND FUNDING, LLC, MIDLAND  
CREDIT MANAGEMENT, INC., AND  
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Defendants

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 26, 2018, I electronically filed the with the Clerk of the U.S. District Court, Western District of Michigan, the foregoing **JOINT REPLY BRIEF** by using the CM/ECF system, which will send notification of such filing(s) to all attorneys of record and via U.S. Mail, First Class to all non-attorneys:

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***/s/ Nabil G. Foster***

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